Case 16-15550-mdc Doc 37 Filed 05/16/17 Entered 05/16/17 21:45:19 Desc Main IN THE UNITED STATES BANKRUPTCY COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA (Philadelphia)

IN RE:

JORGE R. COLON : BK. No. 16-15550 MDC

Debtor

Chapter No. 13

LSF9 MASTER PARTICIPATION TRUST

v.

Movant

JORGE R. COLON

DENNISE COLON (Non-filing Co-Debtor) : 11 U.S.C. §362 and 1301

Respondents

:

MOTION OF LSF9 MASTER PARTICIPATION TRUST FOR RELIEF FROM AUTOMATIC STAY UNDER §362 PURSUANT TO BANKRUPTCY PROCEDURE RULE 4001

Movant, by its attorneys, PHELAN HALLINAN DIAMOND & JONES, LLP, hereby requests a termination of Automatic Stay and leave to foreclose on its mortgage on real property owned by Debtor JORGE R. COLON A/K/A JORGE COLON and DENNISE COLON (Non-filing Co-Debtor).

- 1. Movant is LSF9 MASTER PARTICIPATION TRUST.
- 2. Debtor, JORGE COLON and DENNISE COLON (Non-filing Co-Debtor) are the owners of the premises located at **8837 ROOSEVELT BOULEVARD, PHILADELPHIA, PA 19152**, hereinafter known as the mortgaged premises.
 - 3. Movant is the holder of a mortgage on the mortgaged premises.
- 4. Debtor's failure to tender monthly payments in a manner consistent with the terms of the Mortgage and Note result in a lack of adequate protection.
- 5. Movant wishes to institute foreclosure proceedings on the mortgage because of Debtor's failure to make the monthly payment required hereunder.
- 6. The foreclosure proceedings to be instituted were stayed by the filing of the instant Chapter 13 Petition.
- 7. As of March 23, 2017, Debtor has failed to tender post-petition mortgage payments for the months of November 2016 through March 2017. The monthly payment amount for

Case 16-15550-mdc Doc 37 Filed 05/16/17 Entered 05/16/17 21:45:19 Desc Main the months of November 2016 through March 20page \$965.92, less suspense in the amount of \$928.53, for a total amount due of \$3,896.57. The next payment is due on or before April 1, 2017 in the amount of \$965.02. Under the terms of the Note and Mortgage, Debtor has a continuing obligation to remain current post-petition and failure to do so results in a lack of adequate protection to Movant.

- 8. Movant, specifically requests relief from the Co-Debtor Stay imposed by 11 U.S.C. 1301 as to the non-filing Co-Debtor, DENNISE COLON.
- 9. Movant has cause to have the Automatic Stay terminated as to permit Movant to complete foreclosure on its mortgage.
- 10. Movant specifically requests permission from the Honorable Court to communicate with the Debtor and Debtor's counsel to the extent necessary to comply with applicable nonbankruptcy law.
- 11. Movant, it's successors and assignees posits that due to debtor's continuing failure to tender post-petition mortgage payments and the resulting and ever increasing lack of adequate protection that said failure presents, sufficient grounds exist for waiver of Rule 4001(a)(3), and that Movant, its successors or assignees should be allowed to immediately enforce and implement the Order granting relief from the automatic stay.

WHEREFORE, Movant respectfully requests that this Court enter an Order;

- a. Modifying the Automatic Stay under Section 362 with respect to **8837 ROOSEVELT BOULEVARD, PHILADELPHIA, PA 19152** (as more fully set forth in the legal description attached to the Mortgage of record granted against the Premises), as to allow Movant, its successors and assignees, to proceed with its rights under the terms of said Mortgage; and
- b. Movant specifically requests permission from this Honorable Court to communicate with the Debtor and Debtor's counsel to the extent necessary to comply with applicable nonbankruptcy law; and
- c. Holding that due to debtor's continuing failure to tender post-petition mortgage payments and the resulting and ever increasing lack of adequate protection that said failure presents, sufficient grounds exist for waiver of Rule 4001(a)(3), and that Movant, its successors or assignees,

stay; and

- d. Lifting the Co-Debtor stay imposed by 11 U.S.C. 1301; and
- e. Granting any other relief that this Court deems equitable and just.

/s/ Thomas Song, Esquire
Thomas Song, Esq., Id. No.89834
Phelan Hallinan Diamond & Jones, LLP
1617 JFK Boulevard, Suite 1400
One Penn Center Plaza
Philadelphia, PA 19103
Phone Number: 215-563-7000 Ext. Ext 31387

Fax Number: 215-568-7616

Email: Thomas.Song@phelanhallinan.com

May 16, 2017